

## WILEY, REIN &amp; FIELDING

SEP 2 - 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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September 2, 1998

**BY HAND DELIVERY:**

The Honorable William Kennard  
The Honorable Susan Ness  
The Honorable Michael Powell  
The Honorable Harold Furchgott-Roth  
The Honorable Gloria Tristani  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Re: **Applications for Transfer of Control and Petition to  
Terminate and For Special Relief (WT Docket No. 97-115)**

Dear Mr. Chairman and Commissioners:

On behalf of MobileMedia Corporation, Debtor-in-Possession ("MobileMedia"), and Arch Communications Group, Inc. ("Arch"), transmitted herewith are Transfer of Control Applications and a Petition to Terminate and For Special Relief (collectively, the "Application")<sup>1</sup>. The Application seeks Commission consent to effectuate a Merger and Plan of Reorganization which, when completed, would: (1) transfer control of MobileMedia to Arch; (2) assign all of MobileMedia's licenses and authorizations to a single subsidiary, MobileMedia License Co. L.L.C.; and (3) transfer control of Arch to a new, widely dispersed group of investors. Pursuant to the FCC's direction, the Application is being filed directly with the Commission.<sup>2</sup>

Under the proposed Merger, MobileMedia's existing shareholders will receive no consideration, and their shares will be canceled. MobileMedia's secured lenders will receive cash

<sup>1</sup> For convenience, the Petition to Terminate and For Special Relief and related exhibits are contained in Volume 1 of the enclosures hereto, while Volumes 2 and 3 contain the Transfer of Control Applications.

<sup>2</sup> See *MobileMedia Corporation, et al.*, Order, FCC 97-197 at ¶ 17 (rel. June 6, 1997) (*Second Thursday* Petition "shall be filed with the Commission as part of this proceeding and will be acted on by the Commission.")

representing payment of all of the principal amount owed to them. A widely dispersed group of MobileMedia's unsecured creditors will receive stock and rights to purchase stock and warrants of Arch, which will result in MobileMedia's unsecured creditors collectively owning a majority of stock in the Combined Company. It is anticipated that the Merger Agreement and associated documents may be amended in a manner not expected to have a material affect on the Commission's consideration of the Applications. The applicants will supplement this Application with any updated information as soon as possible.

The proposed Merger, in accordance with the Commission's *Second Thursday* policy, will preserve the economic interests of numerous innocent creditors who are owed more than \$1.1 billion. Moreover, the four "suspected wrongdoers" in this case will receive no benefits as a result of the transaction (although they have filed claims in the Bankruptcy proceedings for certain contractual claims) and will not be involved in the management or operations of the Combined Company.

As the Commission is aware, the proposed Merger is also subject to approval by the United States Bankruptcy Court for the District of Delaware. Accordingly, the proposed Plan of Reorganization, which is reflected in this Application, was submitted to the Court on August 20. A hearing on the issuance of a Disclosure Statement to MobileMedia's creditors is currently scheduled for September 24. When the Disclosure Statement is approved, the Plan will be submitted for a period of 60 - 75 days for a vote of certain of MobileMedia's creditors. At the end of this period - likely to be sometime in early to mid December - the Plan will be ripe for confirmation, and MobileMedia intends to seek its immediate confirmation by the Bankruptcy Court. For this reason, and for the business and bankruptcy reasons outlined in the Application, the applicants respectfully request that the Commission process the Application as expeditiously as possible, consistent with the requirements of the Communications Act, so as to permit consummation of the Plan at the earliest possible date. To facilitate the expeditious consideration of the Application, the applicants further request simultaneous consideration of the Transfer of Control Applications and Petition to Terminate, consistent with the Commission's established practice in *Second Thursday* cases.<sup>3</sup>

In accordance with applicants' discussions with the Commission staff, the microfiche requirements associated with certain applications for this filing have been waived. Also, please be advised that filing fee payments in the total amount of \$188,370, along with the associated Forms 159, have been wire transferred to Mellon Bank, Pittsburgh in accordance with FCC procedures and pursuant to staff instruction. Copies of the completed Forms 159 are attached hereto for reference purposes.

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<sup>3</sup> *Seraphim Corp.*, 4 FCC Rcd 8819 (1989) (Transfer of Control Applications processed by the Mass Media Bureau simultaneously with Commission consideration of a Petition to Terminate).

Chairman and Commissioners  
Federal Communications Commission  
September 2, 1998  
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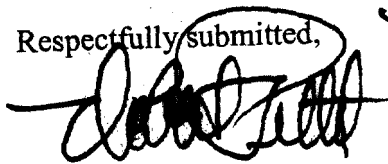
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Respectfully submitted,



Robert L. Pettit  
Counsel for MobileMedia Corporation

Enclosures

cc: Magalie Roman Salas, Secretary (w/ enclosures)  
As indicated on attached service list

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

SEP 2 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

MOBILEMEDIA CORPORATION, et al. )

WT DOCKET NO. 97-115

Applicant for Authorizations and Licensee of  
Certain Stations in Various Services )

Applications of )

MOBILEMEDIA CORPORATION and )  
ARCH COMMUNICATIONS GROUP, INC. )  
for Transfer of Control of Their Radio Licenses )

File No. \_\_\_\_\_

To: The Commission

**APPLICATIONS FOR TRANSFER OF CONTROL AND  
PETITION TO TERMINATE AND FOR SPECIAL RELIEF**

**VOLUME I**

**ARCH COMMUNICATIONS  
GROUP, INC.**

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September 2, 1998

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- G. Declarations Supporting Second Thursday Showing

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IX. ARCH FORMS

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

MOBILEMEDIA CORPORATION, et al. )

WT DOCKET NO. 97-115

Applicant for Authorizations and Licensee of )  
Certain Stations in Various Services )

Applications of )

MOBILEMEDIA CORPORATION and )

File No. \_\_\_\_\_

ARCH COMMUNICATIONS GROUP, INC. )

for Transfer of Control of Their Radio Licenses )

To: The Commission

**APPLICATIONS FOR TRANSFER OF CONTROL AND  
PETITION TO TERMINATE AND FOR SPECIAL RELIEF**

**I. OVERVIEW**

MobileMedia Corporation and substantially all of its subsidiaries, Debtors-in-Possession ("MobileMedia" or the "Company"), and Arch Communications Group, Inc. and its subsidiaries ("Arch") hereby seek Commission consent to effectuate a transaction (hereinafter referred to as the "Merger") which, when completed, would result in (1) the transfer of control of MobileMedia to Arch; (2) the *pro forma* assignment of all of MobileMedia's licenses and authorizations to a single subsidiary, MobileMedia License Co. L.L.C.; and (3) the transfer of control of Arch to a new, widely-dispersed group of investors.

The Applicants submit that the proposed transaction meets the requirements of the Commission's *Second Thursday* doctrine<sup>1</sup> and, accordingly, also request that the pending hearing on MobileMedia's qualifications be terminated and that the Commission authorize transfer of MobileMedia's licenses. Pursuant to the FCC's direction, these applications are being filed directly with the Commission.<sup>2</sup>

As detailed below, the transaction will plainly serve the public interest. Granting these applications will protect the interests of the Company's thousands of innocent creditors, whose interests total more than \$1.1 billion, thus accommodating the policies of the Communications Act with those of the Bankruptcy Code.<sup>3</sup> The transaction will also preserve MobileMedia's business operations and ensure the continued provision of quality paging service to MobileMedia's accounts involving over 3.2 million units in service. Further, the synergies produced by the Merger will result in service enhancements and efficiency gains that will benefit consumers nationwide. In addition, given the numerous participants in the highly competitive messaging marketplace, the proposed merger raises no significant competitive concerns.

On August 20, 1998, MobileMedia filed its First Amended Joint Plan of Reorganization (the "Amended Plan") with the United States Bankruptcy Court for the District of Delaware, which Amended Plan is integral to effectuating the Merger. On August 25,

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<sup>1</sup> See *Second Thursday Corp.*, 22 F.C.C.2d 515 (1970), *recon. granted in part*, 25 F.C.C.2d 112 (1970).

<sup>2</sup> See *MobileMedia Corporation, et al.*, 12 FCC Rcd 7927 (1997) (hereinafter "Stay Order") (*Second Thursday* request "shall be filed with the Commission as part of this proceeding and will be acted on by the Commission.")

<sup>3</sup> See *LaRose v. FCC*, 494 F.2d 1145, 1147 (D.C. Cir. 1974).



1998, MobileMedia filed the Disclosure Statement to the Amended Plan. Once the Disclosure Statement is approved by the Bankruptcy Court, MobileMedia will submit the Amended Plan for a vote of the company's creditors, in accordance with the Bankruptcy Code; and ask the Bankruptcy Court to confirm the Amended Plan. The Amended Plan is fully supported by the Official Committee of Unsecured Creditors. Therefore, and for the reasons discussed below, the parties request expeditious action with regard to these applications and the *Second Thursday* petition.

The transfer applications for the various radio licenses held by MobileMedia and Arch and the *Second Thursday* petition are consolidated herein and organized into the following eight additional sections:

- The Transaction (Section II)
- Request to Terminate Hearing Under *Second Thursday* Doctrine (Section III)
- Public Interest Analysis (Section IV)
- Request for Expeditious Approval (Section V)
- Relief Requested (Section VI)
- Supporting Exhibits (Section VII)
  - A. Merger Agreement
  - B. Bankruptcy Court Filings
  - C. Charts Depicting Pre- and Post-Merger Organizational Structures of MobileMedia and Arch
  - D. FCC Form 430 for Transferee
  - E. Articles of Incorporation of Transferee
  - F. Certificate of Formation of MobileMedia License Co. L.L.C.
  - G. Declarations Supporting *Second Thursday* Showing
- Required FCC Forms to Transfer Control of MobileMedia's Radio Licenses (Section VIII)
- Required FCC Forms to Transfer Control of Arch's Radio Licenses (Section IX)

## **II. THE TRANSACTION**

### **A. Parties to the Application**

MobileMedia is one of the largest paging companies in the United States, with approximately 3.2 million units in service as of June 30, 1998. MobileMedia offers local, regional and nationwide coverage to subscribers in all 50 states and the District of Columbia, including local coverage to each of the 100 most populated metropolitan markets in the country. The Company operates two one-way nationwide networks and recently announced plans to begin construction on two nationwide narrowband PCS networks for which it holds licenses. MobileMedia offers four types of paging services through its networks — digital display, alphanumeric display, tone-only and tone-plus-voice. MobileMedia also does business under the name MobileComm.

Arch, a leading provider of wireless messaging services, primarily paging services, had 4.1 million pagers in service as of June 30, 1998. Arch operates in 41 states and in more than 180 of the 200 largest markets in the United States, offering local, regional, and nationwide paging services employing digital networks covering approximately 85 percent of the United States population. Arch offers four types of paging services – digital display, alphanumeric display, tone-only and tone-plus-voice.

### **B. Background**

As a result of financial pressures arising primarily from difficulties in integrating various business acquisitions, on January 30, 1997, MobileMedia and substantially all of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the United States

Bankruptcy Code with the U.S. Bankruptcy Court in Wilmington, Delaware.<sup>4</sup> This action was designed to preserve the Company's business operations while the Company restructured its more than \$1.1 billion in debt. During the pendency of these cases, MobileMedia's management has continued to manage the operations and affairs of MobileMedia as debtors-in-possession under the jurisdiction of the Bankruptcy Court and pursuant to authority granted by the FCC.<sup>5</sup>

As the Commission is aware, in its September 27, 1996 and October 21, 1996 press releases, the Company disclosed that misrepresentations and other violations had occurred during the licensing process for as many as 400 to 500 (or approximately 6-7%) of its nearly 8,000 local transmission one-way paging stations. MobileMedia immediately caused outside counsel to conduct an investigation and to prepare a comprehensive report - which report was provided to the FCC on October 15, 1996.<sup>6</sup> In cooperation with the FCC, outside counsel's investigation was expanded to examine all of MobileMedia's paging licenses and the results of that investigation were submitted to the FCC on November 8, 1996. In addition, MobileMedia developed and implemented a company-wide compliance plan that included a review of all Company facilities to confirm compliance with FCC licensing requirements; the establishment of new procedures to ensure on-going database accuracy; and the

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<sup>4</sup> *In re MobileMedia Communications, Inc. et al.* (Case No. 97-174 (PJW)).

<sup>5</sup> On February 13, 1997, MobileMedia filed with the FCC applications for the *pro forma* assignment of its licenses to MobileMedia and its subsidiaries, debtors-in-possession. In a series of public notices, the FCC granted those applications.

<sup>6</sup> A corrected copy of the report was subsequently provided to the FCC on October 16, 1996.

implementation of procedures to govern coordination, responsibility and oversight of various departments in the FCC licensing process.

On April 8, 1997,<sup>7</sup> the FCC commenced an administrative hearing to inquire into the qualifications of MobileMedia to remain a licensee.<sup>8</sup> Pursuant to the Company's request, on June 6, 1997, the Commission stayed the hearing for a period of ten months in order to permit the Company to pursue a transfer of control under the Commission's *Second Thursday* doctrine.<sup>9</sup> The Commission recently extended that stay until October 6, 1998.<sup>10</sup>

As detailed below, the proposed transaction satisfies the requirements of the *Second Thursday* doctrine and is clearly in the public interest. Accordingly, the Applicants request that the hearing be terminated without further proceedings.

### C. Description of the Transaction

The applications seek Commission consent to transfer control of all of MobileMedia's FCC licenses to Arch as it will be constituted following the Merger (hereafter the post-merger Arch will be referred to as the "Combined Company"). The Applicants also notify the

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<sup>7</sup> Prior to this, on January 13, 1997, the Wireless Telecommunications Bureau dismissed certain MobileMedia applications as defective and automatically terminated certain authorizations that remained unconstructed. In addition, the Bureau automatically terminated certain other authorizations of the Company that were not timely constructed, but permitted MobileMedia to continue to operate these facilities on an interim basis. *See Public Notice: Wireless Narrowband Branch Information*, 12 FCC Rcd 792 (1997) ("January 13 Public Notice").

<sup>8</sup> *MobileMedia Corporation, et al.*, 12 FCC Rcd 14896 (1997). Consistent with FCC policy, MobileMedia continues to operate its licensed facilities and provide service to the public during the pendency of the hearing proceeding.

<sup>9</sup> Stay Order, 12 FCC Rcd at 7927. For a discussion of the *Second Thursday* doctrine, see Section III.

<sup>10</sup> *MobileMedia Corporation, et al.*, FCC 98-109 (rel. Jun. 11, 1998) (Order) (hereinafter "*Stay Extension Order*").

Commission of a *pro forma* assignment of MobileMedia's licenses from the numerous corporate entities that currently hold them to a single newly created subsidiary.<sup>11</sup> Finally, as a result of the Merger, more than 50 percent of the stock of the Combined Company will be held by new shareholders and, accordingly, authorization for a change in control of Arch's current licenses is also being sought.<sup>12</sup>

The Agreement and Amended Plan contemplate that Arch will acquire MobileMedia for a combination of cash (paid to MobileMedia's administrative, priority and secured creditors); the assumption of certain liabilities; and the issuance to MobileMedia's unsecured creditors a combination of Arch common stock, and rights to purchase for cash Arch common stock and warrants for additional Arch common stock.<sup>13</sup>

The transaction, which will be implemented through the Amended Plan, includes the following terms:

- MobileMedia's existing shareholders will not receive any consideration under the Merger Agreement or Amended Plan, and their shares of MobileMedia common stock will be canceled.
- Holders of MobileMedia's secured bank debt, which aggregates \$649 million in principal amount, will receive 100% of such principal amount in cash, comprised of a \$479 million payment from Arch and \$170 million in proceeds expected to be distributed upon the closing of MobileMedia's pending sale of its tower site assets to

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<sup>11</sup> Attached at Section VII.C. is a depiction of all of the pre-Merger MobileMedia licensees. As explained below, following the Merger, all of the licenses held by these entities will be held by MobileMedia License Co. L.L.C.

<sup>12</sup> After the Merger, Arch's senior management will continue to operate the business and affairs of the Combined Company and Arch's existing seven directors will continue to serve on the Combined Company's board of directors, joined by two directors to be nominated by two of MobileMedia's largest unsecured creditors. Arch's current licenses would not be assigned as part of the Merger; rather, these licenses will continue to reside with the current licensees.

<sup>13</sup> A copy of the Agreement and Plan of Merger (hereinafter "Merger Agreement") is attached at Section VII.A of this filing.

Pinnacle Towers Inc. Arch intends to finance the \$479 million cash payment with \$262 million in proceeds from additional bank debt and an additional note offering and \$217 million in cash from the proceeds of the exercise of transferable rights to be issued by Arch to MobileMedia's unsecured creditors, whose claims aggregate approximately \$480 million. These rights entitle MobileMedia's unsecured creditors (or their assignees) to acquire for cash between 34.3% and 52.1% of Arch's common stock (depending upon the market price of the Arch common stock during a designated period), and warrants to purchase another approximately 2.5% of the Arch common stock.<sup>14</sup>

- In addition to receiving their rights to purchase Arch stock and warrants, MobileMedia's unsecured creditors will receive pro rata interests aggregating between 17.2% (if the rights entitle them to purchase 52.1%) and 31.3% (if the rights entitle them to purchase 34.3%) of Arch's common stock (depending upon the market price of the Arch common stock during a designated period).<sup>15</sup>
- Arch's existing shareholders (including its Series C preferred shareholders) will also receive warrants in connection with the transaction to purchase 7% of Arch's common stock. All warrants will have an exercise price of \$8.19 per share.
- Upon consummation of the Merger, Arch's existing shareholders (including the Series C preferred shareholders) will hold between 30.7% and 34.4% of the Combined Company's common stock, while MobileMedia's unsecured creditors will hold between 65.6% and 69.3% of such stock (in each case depending upon the valuation used in determining the issue price for the rights offering).
- Arch will pay the priority and administrative expenses of MobileMedia as of the effective date of the transaction, and will repay expected borrowings under MobileMedia's debtor-in-possession borrowing facility.

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<sup>14</sup> Certain of MobileMedia's largest unsecured creditors have agreed in connection with the transaction to act as standby purchasers with respect to any shares of Arch common stock and warrants not purchased upon the exercise of such rights. As consideration for their backup commitments, such creditors will receive warrants to purchase another 2.5% of Arch's common stock.

<sup>15</sup> Since both the rights and the common stock will be freely tradeable, the attached ownership report reflects attributable ownership based on the initial distribution to the unsecured creditors. The Applicants believe that the ownership will be more widely disbursed at consummation even than that reflected in the attached ownership report. In any event, no single shareholder or group of shareholders acting in concert will have the right to control the Combined Company or will own sufficient equity or voting rights to control the reconstituted Combined Company.

After consummation of the Merger, the MobileMedia licenses will be held by the newly created MobileMedia License Co. L.L.C., which is to be an indirect subsidiary of Arch Paging, Inc., which is in turn a wholly-owned subsidiary of Arch Communications, Inc., a wholly-owned subsidiary of Arch, the ultimate parent corporation. To effectuate the transfer and pro forma assignment of the MobileMedia licenses, and assuming all conditions (including grant of FCC consent) are satisfied, the following transactions will occur in the order listed, but in effect simultaneously:

- (1) MobileMedia Corporation will contribute all of its assets to MobileMedia Communications, Inc. and will thereafter immediately dissolve, at which time the separate corporate existence of MobileMedia Corporation will cease.
- (2) MobileMedia Communications, Inc. will merge with and into Farm Team Corp. ("Merger Subsidiary"), a wholly-owned subsidiary of Arch Communications Group, Inc., and the separate corporate existence of MobileMedia Communications, Inc. will cease.
- (3) Mobile Communications Corporation of America ("MCCA"), a wholly-owned direct subsidiary of MobileMedia Communications, Inc., will merge with and into Delaware Subsidiary Co., originally a wholly-owned direct subsidiary of MobileMedia Communications, Inc. and a wholly-owned direct subsidiary of Merger Subsidiary as a result of the merger described immediately above, and the separate corporate existence of MCCA will cease.
- (4) All wholly-owned direct subsidiaries of MCCA will be merged with and into Delaware Subsidiary Co. (as successor to MCCA).
- (5) Merger Subsidiary (as successor to MobileMedia Communications, Inc.) will contribute its interest in the common stock of FWS Radio, Inc., originally a wholly-owned direct subsidiary of MobileMedia Communications, Inc., to Delaware Subsidiary Co. and FWS Radio, Inc. will then be merged with and into Delaware Subsidiary Co.
- (6) MobileComm of the West, Inc., a wholly-owned direct subsidiary of Delaware Subsidiary Co. as a result of the mergers described in item (4) above, will be merged with and into Delaware Subsidiary Co.
- (7) Dial Page Southeast, Inc., MobileMedia Communications, Inc. (California), MobileMedia DP Properties, Inc., MobileMedia Paging, Inc., MobileMedia PCS, Inc. and Radio Call Company of Va., Inc., all wholly-owned direct subsidiaries of Merger Subsidiary as a result of the merger described in item (2) above, will be merged with and into Delaware Subsidiary Co.

- (8) Merger Subsidiary will transfer its assets (other than its shares of Delaware Subsidiary Co.) to Delaware Subsidiary Co.
- (9) Delaware Subsidiary Co. will organize License Co. L.L.C., as a wholly-owned limited liability company of Delaware Subsidiary Co. and will transfer the Licenses then held by it to License Co. L.L.C.
- (10) Arch Communications Group, Inc. will contribute the stock of Merger Subsidiary to Arch Paging, Inc.<sup>16</sup>
- (11) The name of Farm Team Corp. will be changed to MobileMedia Communications, Inc. The name of Delaware Subsidiary Co. will be changed to Mobile Communications Corporation of America. The name of License Co. L.L.C. will be changed to MobileMedia License Co. L.L.C.

For convenience, attached hereto at Section VII.C. are charts depicting MobileMedia's and Arch's pre-merger organizational structures, as well as the post-merger organizational structure.

#### **D. Authorizations to be Transferred**

The applications for transfer of control of MobileMedia's and Arch's radio licenses include numerous Title III authorizations. The types of authorizations held by MobileMedia for which transfer authority is requested<sup>17</sup> are listed below:

Paging and Radiotelephone Service  
Personal Communications Service (Narrowband)<sup>18</sup>  
Air-Ground Radiotelephone Service  
Point-to-Point Microwave Service  
Fixed Satellite Service  
Land Mobile Service (Business Radio and Private Carrier Paging)

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<sup>16</sup> Arch will retain the right to make such changes in its post-Merger corporate structure as it determines necessary in its business judgment. Any such changes will be made in accordance with the Commission's rules.

<sup>17</sup> A listing of the call signs for these authorizations is contained, *infra*, at Section VIII.

<sup>18</sup> These systems are currently unconstructed. Arch recognizes that as transferee it will be subject to the construction requirements applicable to these licenses.



The types of authorizations held by Arch for which transfer authority is requested<sup>19</sup> are listed below:

- Paging and Radiotelephone Service
- Rural Radiotelephone Service
- Air-Ground Radiotelephone Service
- Specialized Mobile Radio Service
- Point-to-Point Microwave Service
- Fixed Satellite Service
- Land Mobile Service (Business Radio and Private Carrier Paging)
- Private Operational Fixed Microwave Service

**E. Qualifications of the Transferee**

Once the Merger occurs, the reconstituted Combined Company will continue to be well qualified to exercise ultimate authority over the various types of Title III licenses held by its subsidiaries. As detailed in the FCC Form 430 attached at Section VII.D., the Combined Company will continue to satisfy the necessary citizenship and character qualifications to be an FCC licensee. Further, as the owner of numerous CMRS systems licensed by the Commission, Arch's technical and operational expertise in the telecommunications industry is a matter of public record. The proposed transaction will allow Arch to bring these considerable qualifications to bear with respect to MobileMedia's CMRS service offerings. Arch is also financially qualified to acquire control of MobileMedia and has adequate resources to undertake and consummate the merger, consistent with its other obligations.

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<sup>19</sup> A listing of the call signs for these authorizations is contained, *infra*, at Section IX. Arch (through wholly-owned subsidiaries) also holds non-controlling, minority interests in Benbow PCS Ventures, Inc. (licensee of regional narrowband PCS stations KNKV235, KNKV241, KNKV217, KNKV223 and KNKV229) and CONXUS Communications, Inc., parent of CONXUS Spectrum, Inc. (licensee of narrowband PCS stations KNKV213, KNKV219, KNKV225, KNKV231 and KNKV237). Given the non-controlling nature of these interests, the proposed transaction will not result in a transfer of control of these licenses and, accordingly, no Commission authority is being requested herein.

## **F. Additional Authority**

In addition to Commission approval of the transaction described above, the Applicants also seek certain additional authority necessary to complete these transactions:

### **1. Request for Temporary Waiver of Narrowband PCS Rules**

Pursuant to Sections 1.3 and 24.819 of the Commission's Rules, and as a necessary component of this transaction, the Applicants also request a temporary, limited waiver of the Narrowband Personal Communications Service ("NPCS") spectrum aggregation limit ("spectrum cap") contained in Section 24.101 of the Commission's rules. As discussed in more detail below, the Commission has commenced a rulemaking in which it has solicited comment regarding whether the NPCS spectrum cap should be relaxed or eliminated in its entirety. Consistent with Commission precedent, Arch requests a limited waiver of the spectrum cap in the form of an extension of time — 90 days after the conclusion of the aforementioned rulemaking — in which to come into compliance with the spectrum cap.

Arch holds a 49.9% non-controlling, equity interest in Benbow PCS Ventures, Inc. ("Benbow") and a 10.5% non-controlling, equity interest in CONXUS Communications, Inc., the parent of CONXUS Spectrum, Inc. (collectively, "CONXUS").<sup>20</sup> Benbow and CONXUS each hold NPCS Regional authorizations for each of the five NPCS regions.<sup>21</sup> Pursuant to

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<sup>20</sup> Arch's interest in Benbow is held through Benbow Investments, Inc., a wholly-owned subsidiary of Arch Paging, Inc. ("Arch Paging"), which is a wholly-owned subsidiary of Arch Communications, Inc. ("ACI"). ACI, in turn, is a wholly-owned subsidiary of Arch Communications Group, Inc. Arch's interest in CONXUS is held through Arch Paging.

<sup>21</sup> Benbow directly holds the NPCS authorizations for the Central and Western Regions (call signs KNKV235 and KNKV241). On November 3, 1997, the Commission consented to the transfer of control of PageCall, Inc.'s NPCS authorizations in the other three regions to Benbow. See *Public Notice: Commercial Wireless Service Information*, Report No. LB-98-07 (rel. Nov. 7, 1997), FCC File No. 50004-CN-TC-97 (call signs KNKV217, KNKV223, and KNKV229). The call signs associated with CONXUS are KNKV213, KNKV219, KNKV225, (Continued...)

Section 24.101(a)(2) of the Commission's Rules, the NPCS spectrum held by each of these entities is attributable to Arch.<sup>22</sup> Thus, Arch is deemed to hold interests in two NPCS licenses in every region.

MobileMedia, through its affiliates and subsidiaries, holds one nationwide NPCS license<sup>23</sup> and five regional NPCS licenses comprising a single NPCS system.<sup>24</sup> Thus, upon completion of the Merger, the Combined Company would effectively hold two additional NPCS nationwide licenses, giving it a total of four NPCS licenses in every region. Absent a waiver, these combined interests would violate Section 24.101, under which an entity may not have a 5% or greater interest in more than three NPCS licenses in a given geographic area.<sup>25</sup>

On April 23, 1997 the Commission issued a *Further Notice of Proposed Rulemaking* that sought comment on whether the NPCS spectrum cap should be eliminated.<sup>26</sup> Virtually all commenters supported eliminating the cap or increasing the attribution threshold to 20%.<sup>27</sup> If

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(...Continued)  
KNKV231, and KNKV237.

<sup>22</sup> A party is deemed to be an NPCS licensee if it holds an ownership interest of 5% or more in a NPCS license. 47 C.F.R. § 24.101(a)(2).

<sup>23</sup> A MobileMedia subsidiary, MobileComm Wireless Holdings, LP, holds the nationwide NPCS license for call sign KNKV207.

<sup>24</sup> MobileMedia PCS, Inc. holds five regional NPCS authorizations under the following call signs: KNKV214, KNKV220, KNKV226, KNKV238, and KNKV232.

<sup>25</sup> As discussed below, this 5% attribution standard is more strict than the attribution standard applicable to broadband PCS (*i.e.*, 20%) for purposes of the 45 MHz CMRS spectrum cap.

<sup>26</sup> *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, 12 FCC Rcd 12972 (1997) (hereinafter "*Further Notice*").

<sup>27</sup> Indeed, only one party supported retaining spectrum cap rules without modification. *See* Comments of Merlin at 5.

either proposal were adopted, the Combined Company would not be required to divest any of its NPCS licenses because it only has a 10.5% interest in the licenses held by CONXUS. Accordingly, the Applicants respectfully request that the Commission grant a temporary waiver of Section 24.101 to permit the Combined Company to retain its existing interests in the aforementioned NPCS licenses pending the conclusion of the referenced rulemaking. The Applicants request that the Combined Company be given 90 days from the date the rulemaking proceeding is terminated to divest any licenses necessary to come into compliance with the rule as it may exist at that time.

The requested waiver is fully consistent with the public interest. Section 24.819 of the Commission's rules sets forth the specific standard for granting waivers of the PCS rules. This section specifies that waivers of PCS rules may be granted if a petitioner demonstrates *either*:

- (1) that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case and that grant of the waiver is otherwise in the public interest; or
- (2) that the unique facts and circumstances of a particular case render the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.<sup>28</sup>

More generally, Section 1.3 of the Commission's Rules sets forth the general standard for granting waivers of FCC rules. Pursuant to Section 1.3, any FCC Rule "may be suspended, revoked, amended or waived for good cause shown."<sup>29</sup> Under consistent Commission precedent, "good cause" waivers are appropriate where a petitioner shows that "special

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<sup>28</sup> 47 C.F.R. § 24.819(a)(i)(ii).

<sup>29</sup> 47 C.F.R. § 1.3.

circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>30</sup>

Under either standard, the requested waiver should be granted.<sup>31</sup> As an initial matter, grant of the waiver is consistent with the Commission’s general mandate to “accommodate [ ] the policies of federal bankruptcy law,”<sup>32</sup> as it would permit MobileMedia to emerge from bankruptcy and to preserve the value of the Company for its innocent creditors.<sup>33</sup> The waiver is also clearly justified under Section 24.819(a)(2) because the Commission is considering revision of the very rules which would require divestiture in this case.<sup>34</sup> Absent the Commission’s grant of the instant request for waiver, the Combined Company would be

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<sup>30</sup> *Northeast Cellular Telephone Co., L.P. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). See also *WAIT Radio v. F.C.C.*, 418 F.2d 1153 (D.C. Cir. 1969) *cert. denied* 409 U.S. 1027 (1972).

<sup>31</sup> The Commission has cited both the general “good cause” waiver standard set forth in Section 1.3 of the rules, as well as the more definitive Section 24.819 standard noted herein, as the basis for granting PCS-related rule waivers. The Commission has explained that Section 24.819 is essentially the same as Section 1.3 and is largely a codification of the general waiver standard set forth in *WAIT Radio*, 418 F.2d at 1153. See *Application for Review of BellSouth Wireless, Inc. Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, 12 FCC Rcd 14031 (1997). The Applicants do not address the waiver standard set forth in Section 24.819 (a)(1) — *i.e.*, that the underlying purpose of the Commission’s NPCS spectrum aggregation rules would be frustrated — because the Commission itself has already called into question the need for the NPCS spectrum cap. See *Further Notice*, 12 FCC Rcd at 12991-92.

<sup>32</sup> *LaRose v. FCC*, 494 F.2d at 1147, n.2.

<sup>33</sup> Analogously, in the broadcast multiple ownership context, the Commission has emphasized that waiver requests involving stations in bankruptcy should be looked upon “favorably.” See 47 C.F.R. § 73.3555, note 7, See also *Telemundo Group, Inc.*, 10 FCC Rcd 1104 (1994); *Channel 33, Inc.*, 4 FCC Rcd 7674 (1988).

<sup>34</sup> *Further Notice*, 12 FCC Rcd at 12991-92.

saddled with the unduly burdensome and irreversible task of complying with a divestiture requirement that may soon be eliminated.

To prevent unwarranted hardships of this nature, the Commission has granted several waiver requests in analogous situations. In each case the waiver was contingent upon the resolution of material intervening events.<sup>35</sup> For example, on November 4, 1996, the Commission granted a waiver of its broadband CMRS spectrum cap<sup>36</sup> to Western PCS III ("Western").<sup>37</sup> In that case Western sought a limited waiver of the 45 MHz CMRS spectrum cap because it held the 30 MHz PCS "B" Block license for the Denver, Colorado MTA and was attributed with 25 MHz licenses overlapping the same area — the combination of which violated the CMRS spectrum cap. Western urged the Commission to grant its waiver request pending the outcome of a rulemaking that proposed to revisit the population overlap attribution

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<sup>35</sup> See *Request of WirelessCo, L.P., PhillieCo, L.P., and Sprint Corporation For Limited Waiver of Section 24.204 of the Commission's Rules*, 10 FCC Rcd 11111 (1995) (granting Sprint additional time to divest its cellular holdings until it could obtain the necessary government approvals required to complete the spin-off); *Cincinnati Bell Telephone Company, Petition for Waiver of Section 24.204 of the Commission's Rules*, 9 FCC Rcd 7658 (1994) (granting Cincinnati Bell additional time to divest its cellular holdings until the resolution of litigation concerning the dissolution of the cellular partnership which was causing it to exceed the CMRS spectrum cap).

<sup>36</sup> Section 20.6 prohibits a licensee from holding more than 45 MHz of combined cellular, PCS and SMR spectrum and states that parties holding interests that conflict with this aggregation limit must divest sufficient spectrum to come into compliance with the cap within 90 days of final grant of the license that causes it to exceed the limit. 47 C.F.R. § 20.6.

<sup>37</sup> *Western PCS III License Corporation Request for Waiver of Section 20.6 of the Commission's Rules*, 11 FCC Rcd 14487 (1996) (hereinafter "*Western Waiver Order*"), *modified*, 13 FCC Rcd 4081 (1997) (extending Western's time to divest to 90 days following the effective date of the Disaggregation Order), *modified*, 12 FCC Rcd 11665 (1997) (extending Western's time to divest until Commission resolution of Western's request for permanent waiver of Section 20.6). The Commission has not yet ruled on Western's Request for permanent waiver.

standards that caused Western to exceed the CMRS spectrum cap.<sup>38</sup> Western also argued that it should not be required to divest until the Commission concluded a separate proceeding that could afford Western additional divestiture opportunities.<sup>39</sup>

The Commission agreed and granted a limited waiver that allowed Western to exceed the CMRS spectrum cap for a period of either: (1) six months; or (2) 90 days after adoption of a Report and Order in the Commission's PCS partitioning and disaggregation proceeding.<sup>40</sup>

The Commission reasoned:

an extension of the divestiture period is appropriate with respect to Western. The Commission's Partitioning and Disaggregation rulemaking may have a material impact on Western's plans to accomplish divestiture and thereby come into compliance with the 45 MHz. CMRS spectrum cap. Specifically, the rules adopted in that proceeding may make available new divestiture options for Western and other CMRS licensees. As such, we conclude that it is consistent with the public interest to grant Western an extension of time to comply with the divestiture requirements of Section 20.6 until 90 days after adoption of a Report and Order in the Partitioning and Disaggregation proceeding.<sup>41</sup>

Consistent with the circumstances present in the *Western* case, the instant waiver request would enable the Combined Company to avoid the burden of complying with rules that are being reexamined by the Commission. Accordingly, the Applicants respectfully request that the subject waiver be granted as part of the FCC's approval of the instant transaction.

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<sup>38</sup> See Western Request for Expedited, Limited Waiver of Sections 24.204 and 20.6, at 3-6 (filed June 14, 1996) ("Western Waiver"); see also *Amendment of Part 20 and 24 of the Commission's Rules*, 11 FCC 15052 (1996).

<sup>39</sup> See Western Waiver at 5; see also *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees*, 11 FCC Rcd 21831 (1996).

<sup>40</sup> *Western Waiver Order*, 11 FCC Rcd at 14488.

<sup>41</sup> *Id.*

Finally, as noted, virtually all commenters supported eliminating the cap<sup>42</sup> or increasing the attribution threshold to 20%,<sup>43</sup> consistent with the attribution standard applicable to broadband PCS. Should the FCC adopt either proposal, then the Combined Company's 10.5% passive, non-controlling interest in CONXUS would no longer be deemed an attributable interest, thus obviating any obligation to divest.

Based on the foregoing, good cause and unique circumstances clearly exist for grant of the instant request for a temporary, limited waiver of the NPCS spectrum cap, pending the Commission's final resolution of this issue.

**2. Request for Standard License Authority to Operate Facilities Listed on Attachment C of the January 13, 1997 Public Notice**

The parties also request that, in granting the instant transfer applications, the Commission grant the Combined Company standard license authority to operate the stations

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<sup>42</sup> For example, AirTouch noted that a spectrum cap seemed "particularly anomalous for narrowband PCS because other Commission licensees with broader bandwidth are free to provide narrowband services with no limitation on how much bandwidth they might devote to such an enterprise." *See* Reply Comments of AirTouch at 7. Similarly, PageMart, Inc. noted that the three to a market narrowband PCS aggregation limit is "unduly restrictive and unnecessary." *See* Comments of PageMart, Inc. at 7-8. *See also* Comments of CONXUS Communications, Inc.

<sup>43</sup> *See* Reply Comments of Celpage, Inc. at 5. *See also* Comments of Benbow PCS Ventures, Inc.; Comments of Arch Paging, Inc. These parties also noted that adoption of revised attribution rules would be consistent with the concept of regulatory parity. The Commission rejected the use of a 5% attribution standard for the 45 MHz CMRS cap, noting that "a higher benchmark of 20 percent should apply. . . in order to encourage capital investment and business opportunities in CMRS," and that "a 20 percent attribution level for the CMRS cap will allow a wide variety of players . . . to enter the marketplace while still preventing anticompetitive practices that would have harmful effects on consumers." *Amendment of Parts 20 and 24 of the Commission's Rules*, 11 FCC Rcd 7824, 7881 (1996).



listed in Attachment C of the January 13 Public Notice which MobileMedia is currently operating under a grant of interim operating authority.<sup>44</sup>

Maintaining service to the public on these channels without interruption is clearly in the public interest. MobileMedia's customers have come to rely on the messaging services offered at these facilities. If the Combined Company is not authorized to continue transmission after consummation of the transaction, these subscribers may have their critical communications services interrupted or terminated. At a minimum, they may suffer the expense and inconvenience of having to change their paging service to a provider who provides comparable coverage of the areas in question. In permitting MobileMedia to continue to operate the stations under interim operating authority, the Commission specifically recognized this concern, underscoring that continued operation of these stations "would serve the public interest, convenience, and necessity by preserving the continuity of service to paging customers."<sup>45</sup>

A grant to the Combined Company of standard license authority will ensure this continuity of service to subscribers, and bring closure to the uncertain and tentative nature of the current operation of these stations under interim operating authority. Further, a grant of

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<sup>44</sup> The authorizations in question were initially granted to MobileMedia under standard license authority, but were not constructed by the expiration date of their respective construction permits. Instead, construction of these stations occurred sometime thereafter. Because the construction deadlines were not met, the Commission in its January 13 Public Notice declared these authorizations to be automatically terminated, but granted MobileMedia authority to operate these facilities on an interim basis in accordance with the terms and conditions of the terminated authorizations until such time as the Commission takes further action.

<sup>45</sup> January 13 Public Notice at 1. *See also Liberty Cable Co.*, 11 FCC Rcd 14133, 14140 (1996) (citing the need "to preserve the continuity of service" to extend grant of interim operating authority); *La Star Cellular Telephone Co.*, 4 FCC Rcd 3777 (1989), *aff'd sub nom. La Star Cellular Telephone Co. v. FCC*, 899 F.2d 1233 (D.C. Cir. 1990) (same).